

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1550

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NO. 74-1550

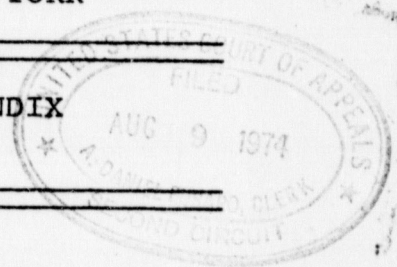
THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
-against-
CARMINE TRAMUNTI, et al.,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DEFENDANTS-APPELLANTS' JOINT APPENDIX
Vol. T(25) - Pages 3279 to 3390

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2 UNITED STATES OF AMERICA
3 vs.
4 CARMINE TRAMUNTI, et al.

73 Cr. 1099

5 New York, February 22, 1974;
6 10.00 A.M.

7 Trial resumed.
8 - -

9 (In the robing room.)

10 THE COURT: I requested you gentlemen in here
11 to find out whether you have any objection to a group of
12 six jurors going to a movie called Sleeper.

13 MR. ELLIS: I saw it.

14 THE COURT: I will tell you right now I wasn't
15 kidding when I said that the last movie I went to see was
16 Red River, which I think goes back into the early --

17 MR. ELLIS: 1950's, I bet.

18 THE COURT: -- early 50's.

19 I don't know what the Sleeper is.

20 MR. ELLIS: It's a Woodie Allen fantasy. It has
21 some trappings of the authoritarian state in it.

22 THE COURT: How about the New Land?

23 MR. ELLIS: That is all right too. It's about
24 Swedish immigrants.

25 MR. LOPEZ: Yes, the founding of America.

1
2 THE COURT: All right. One of the other jurors
3 has a child with chicken pox. I am going to send this
4 woman home tonight with a marshal.

5 MR. ELLIS: Which one is it, Judge?

6 THE COURT: I am not going to tell you.

7 I am sending her home with a marshal just to see
8 the kid. The kid is not an infant, needless to say. Then
9 she will go back to the motel.

10 Does anybody have any objection to that?

11 MR. LOPEZ: No, Judge.

12 THE COURT: Is there anything else?

13 MR. ROSENBERG: We have a very serious problem.
14 Maybe we ought to take it off the record first.

15 (Discussion off the record.)

16 THE COURT: All right. Let's get going.

17 (In open court; jury not present.)

18 THE COURT: Mr. King, I understand that you are
19 not feeling well today. Is that correct, sir?

20 (At the bench; discussion off the record.)

21 THE COURT: A side bar conference was held at
22 which Mr. King indicated that he is feeling quite ill today.
23 To tell you the truth, I can well understand it. I don't
24 feel so well myself.

25 Mr. King indicated that the government had told

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2 him that the government does not expect any evidence coming
3 in against the defendant John Gamba today and he asked
4 whether Mr. Lopez could cover for him.

5 Mr. Gamba, would you consent to that situation?

6 MR. GAMBA: Yes.

7 THE COURT: All right, Mr. King. You can go
8 right now.

9 MR. KING: Thank you, sir.

10 Mr. Curran, you indicated that you had some
11 kind of an application at this point.

12 MR. CURRAN: Yes, your Honor. The witness I
13 think is in the process of being brought down to the witness
14 room by Agent Fitzgerald.

15 I would request that this document be marked
16 Government's Exhibit 82 for identification. It's a letter
17 signed by Henry Peterson, the Assistant Attorney General
18 in charge of the Criminal Division, giving this office, the
19 United States Attorney's office, authority to apply to the
20 United States District Court for an order or orders requiring
21 Joseph Lasalata, also known as Joe Sharp, to give testimony
22 in this case.

23 I hand up the letter to which I have just referred
24 to your Honor and request that it be marked Government's
25 Exhibit I believe 82 for identification.

1
2 Mr. Lasalata, your Honor, is represented by a
3 lawyer. I have been informed by the lawyer that Mr.
4 Lasalata intends to invoke his Fifth Amendment privilege
5 if questioned in this trial. Therefore, it seemed proper
6 to do this without the presence of the jury, because I have
7 a reasonable basis to believe that he would not testify
8 without the grant of immunity.

9 THE COURT: All right. Mark the letter a
10 government exhibit, please.

11 MRS. ROSNER: Your Honor, may we inquire through
12 the Court who the attorney is that represents Mr. LaSalata.

13 MR. CURRAN: Surely. Your Honor, I meant to
14 state it, frankly. It's Jeffry Atlas.

15 MR. FISHER: If your Honor please, prior to the
16 time when the witness takes the stand I would request an
17 opportunity to speak with him through his lawyer.

18 THE COURT: As soon as Mr. Atlas comes here,
19 if he wants to talk to you, I am sure he will.

20 MR. CURRAN: Mr. Atlas is here.

21 THE COURT: Is he in the courtroom?

22 MR. CURRAN: He will be coming to the courtroom
23 I believe with the witness.

24 THE COURT: Why don't you bring him out right
25 now.

(Government's Exhibit 82 marked for identification.)

MR. CURRAN: Your Honor, while we are waiting, if I might, I have three documents which consist of reports of officers which involved Mr. LaSalata. It's the government's position that they in no way come within the provisions of Section 3500 of Title 18.

However, your Honor, out of an excess of caution, I would like to have them marked as 3500 exhibits for identification and handed up to your Honor for inspection, and if your Honor agrees with the government, I would request that they be sealed. Of course, if your Honor disagrees we know what happens then.

THE COURT: All right.

MR. CURRAN: The first one, just to identify it, is a report dated January 17, 1974, consisting of one sentence. It's prepared I believe by Detective Wysocki. I request that that be marked Government's Exhibit 3580 for identification.

The second one is a report of Torrey Shutes dated January 18, 1974, consisting of six paragraphs. I request that be marked Government's Exhibit 3581 for identification.

The final document is a report consisting of one very short paragraph, two sentences, by I believe Detective

1
2 Wysocki, dated January 22, 1974, and I would request that
3 that be marked Government's Exhibit 3582 for identification.

4 THE COURT: Until I hear the direct evidence --
5 I will look at them now -- I can't make a ruling.

6 (Government's Exhibits 3580-3582 marked
7 for identification.)

8 THE COURT: Is someone looking for Mr. Atlas?

9 MR. CURRAN: Yes, your Honor, Mr. Engel. Maybe
10 I should look for Mr. Engel.

11 MRS. ROSNER: Your Honor, last night the
12 government turned over what I believe is 3500 material
13 with respect to Agent Cassella and one of them -- I don't
14 have a 3500 exhibit number, but it's marked 64 on the front --
15 relates to an incident on January 15, 1973, and part of
16 the document indicates that a Nagra recording was made or
17 attempted to be made on that date.

18 I would like to inquire through the Court whether
19 there is a tape recording in existence which purports to be
20 the conversation of that evening and whether it has been
21 turned over to defense counsel. I don't recollect any
22 conversation of the description this document contains,
23 your Honor.

24 THE COURT: I don't know. Was a recording made,
25 Mr. Phillips?

1
2
3 MR. PHILLIPS: Which date is that?

4 MRS. ROSNER: Monday, January 15, 1973.

5 MR. PHILLIPS: I believe so, and I believe it's
6 reflected in Court's Exhibit 55.

7 MRS. ROSNER: Which is the three-page document?

8 MR. PHILLIPS: Right.

9 MRS. ROSNER: No such tape was turned over.
10 Was that an audible tape recording?

11 MR. PHILLIPS: I believe so.

12 MRS. ROSNER: Your Honor, if there is an audible
13 recording we have not yet gotten it. At least, that is my
14 belief, your Honor. I don't recollect any such recording.

15 THE COURT: All right. Let Mr. Phillips look
16 for it.

17 Mr. Panzer, you have something else?

18 MR. PANZER: I just want to talk to your Honor
19 at the side bar.

20 THE COURT: Sure.

21 MRS. ROSNER: Your Honor, there is one other
22 aspect to this.

23 I believe that the government may attempt to
24 elicit through the mouth of a declarant named Carmine Miranda
25 a statement concerning my client. Miranda is named in
the bill of particulars as a co-conspirator. However, to

1
2 this point, your Honor, nothing has been introduced in
3 evidence concerning him, and I would rely on United States
4 vs. Geaney for the proposition that there must be a
5 fair preponderance of non-hearsay evidence establishing
6 Miranda's participation in the conspiracy before a hearsay
7 declaration can be admitted against Mr. Inglese, and I
8 would ask your Honor before a significant and damaging
9 statement is admitted in evidence that the government at
10 least be required to show how they intend to prove by non-
11 hearsay evidence Miranda's participation in this con-
12 spiracy.

13 MR. PHILLIPS: Your Honor, we are a long way from
14 that, but I would like to respond to the tape.

15 The tape that was taken on January 15th is
16 reflected by Court's Exhibit 55 as one tape entitled M-98
17 and another tape entitled A-322, both of which have been
18 turned over to Mr. Dowd approximately six or seven weeks
19 ago.

20 I informed Mrs. Rosner about a week ago or five
21 days ago that her client was referred to on tape A322,
22 which is the January 15th transcript, and if she wanted
23 to obtain it from Mr. Dowd that was up to her, between her
24 and Mr. Dowd.

25 THE COURT: Wait a second. We have a Court's

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2 Exhibit 55 which is the transcript?

3 MR. PHILLIPS: No, no. Court's Exhibit 55 is a
4 three-page document indicating tapes that were turned over
5 to the government by Frank Rogers' office.
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MRS. ROSNER: If I may respond briefly --

THE COURT: Wait a second, please. Let me find out what I am dealing with here.

Was a transcript, Mr. Phillips, to your knowledge, ever prepared of this tape?

MR. PHILLIPS: Not to my knowledge, your Honor.

THE COURT: Who is covering for Mr. Dowd? Are you, Mr. Curley?

MR. CURLEY: Not for purposes of this argument. I am not familiar with it.

THE COURT: I am not suggesting that you are, but do you know when he is coming in?

MR. CURLEY: He will be coming in shortly, your Honor, because of the anticipated testimony this morning, but I can't be more definite.

MRS. ROSNER: Your Honor, if I may respond just very briefly, as I understand Rule 16 and the case law in this circuit, a recorded statement attributable to a defendant is in the nature of not 3500 material but Rule 16 material, which the government has an obligation to provide upon request which was made here before trial.

THE COURT: I gather they turned it over to Mr. Dowd.

1
2 MR. PHILLIPS: This is not a statement of Mr.
3 Inglese, it did not appear in the tape and it was
4 turned over to Mr. Dowd prior to trial.

5 THE COURT: Apparently his client does appear
6 in the tape?

7 MR. PHILLIPS: Yes.

8 MRS. ROSNER: I would merely ask your Honor
9 that if the government intends to elicit this hearsay
10 declaration which is attributed to my client, that the
11 witness who is involved in putting the statement in
12 evidence not be called until Monday morning so that the
13 defense can have an adequate opportunity to listen to
14 the tape, see if there is a transcription in existence
15 and, if not, to prepare one.

16 THE COURT: We will find out.

17 All right, Mr. Panzer, come on up.

18 (At the bench; discussion off the record.)

19 (In open court.)

20 MRS. ROSNER: Sorry, your Honor, I must amend
21 what I said in one respect.

22 THE COURT: Yes.

23 MRS. ROSNER: The declarant who makes the
24 statement about Mr. Inglese, as I indicated to the court,
25 is Carmen Miranda.

1
2 I just checked, your Honor, the original bill
3 of particulars and the supplemental bill of particu-
4 lars, which was filed shortly before trial. The in-
5 dividual Carmen Miranda is not named herein as a co-con-
6 spirator, so I would object, your Honor, to the admission
7 of this testimony on the ground that it is not a state-
8 ment in furtherance of this conspiracy. The government
9 is bound by the list provided before trial and this in-
10 dividual was not represented to be a co-conspirator, so
11 any declaration of his is inadmissible.

12 THE COURT: All right. Would someone be
13 good enough to mark his 3500 material and let me see it,
14 because I don't know what is going on here yet.

15 Has it been marked?

16 Mrs. Rosner is talking about certain 3500
17 material which was turned over.

18 MRS. ROSNER: I will hand the court my copy.

19 THE COURT: No, let's have it marked properly.

20 MR. ENGEL: Your Honor, that has not been
21 marked. There is a series of reports.

22 THE COURT: How many is a series?

23 MR. ENGEL: There are nine or ten.

24 THE COURT: All right. I will tell you what
25 we will do. I see Mr. Atlas is here. There are cer-

tain attorneys who would like to talk to him right now.
I am going to take a short break. Let him talk to
you.

Mr. Engel, you and the clerk are going to mark
the thing. This is the last thing I need right now
is marking a bunch of exhibits. In the meantime I
am going inside and get some books and review some law
which I haven't used in a while.

If Mr. Dowd shows up while I am still inside
would someone be good enough to advise me of that fact?
All right?

All right, Mr. Atlas, these gentlemen and Mrs.
Rosner apparently want to talk to you.

(Recess.)

(In open court; jury not present.)

THE COURT: I assume the government is now
going to call Mr. Joseph LaSalata.

Take the stand, Mr. LaSalata.

J O S E P H A. L a S A L A T A, called as
a witness by the government, being first duly sworn,
testified as follows:

BY THE COURT:

Q Mr. LaSalata, you are represented by an attorney
named Jeffrey Atlas, is that correct?

1
2 A Yes.

3 Q I understand that you intend to invoke your
4 privilege against self-incrimination as to any questions
5 which the government might ask of you.

6 A Yes.

7 Q All right. The government has presented to
8 me Exhibit No. 62, which is basically a request by Mr.
9 Petersen that you be granted use immunity under the provi-
10 sions of Title 18.

11 Do you know what use immunity is?

12 MR. ATLAS: May I consult with him, your
13 Honor?

14 THE COURT: Yes, you may.

15 A Yes.

16 THE COURT: The record should reflect that
17 you consulted with Mr. Atlas then.

18 THE WITNESS: Yes.

19 BY THE COURT:

20 Q I assume he did explain to you what use im-
21 munity is, is that correct?

22 A Yes.

23 Q In use immunity the testimony or other informa-
24 tion which you might give under an order which I might enter
25 cannot be used against you. Do you understand that?

1
2 A Yes.

3 Q There is an exception to that. If you do not--
4 tell the truth you can be prosecuted for perjury. Do
5 you understand that?

6 A Yes.

7 Q And, of course, if you refuse or fail to comply
8 with an order by me to answer questions you can be
9 prosecuted for contempt.

10 A Yes.

11 Q Under the circumstances I am going to order you
12 to answer the questions with the understanding --

13 A Yes.

14 Q In fact, I am going to order that the use im-
15 munity be granted to you as requested by the Attorney
16 General's Office and also by the United States attorney
17 for this district. Therefore, you will have to answer
18 the questions.

19 Do you understand that?

20 A Yes.

21 THE COURT: All right. I guess at this
22 point we might as well call the jury back and we can
23 start the examination.

24 Mr. Atlas, don't go away.

25 MR. ATLAS: I was going to sit in the

1 gta

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2 front row. May I sit here?

3 THE COURT: Yes. Why don't you sit over
4 here close to the witness.

5 MR. ATLAS: Thank you, your Honor.

6 Mr. LaSalata, if at any time you wish to
7 consult with Mr. Atlas, he is going to go about eight
8 or ten feet away from you and you just ask about it.
9 All right?

10 THE WITNESS: Yes.

11 THE COURT: Bring back the jury, please.

12 (Jury present.)

13 THE COURT: Good morning, ladies and gentle-
14 men.

15 You might think that we are starting a little
16 late today, but believe it or not we have been working
17 since the appointed hour.

18 You will note that there is a witness in the
19 witness stand right now. His name is Joseph LaSalata.
20 He has already been sworn by the clerk.

21 All right, Mr. Curran, you may proceed.

22 MR. CURRAN: Thank you, your Honor.

23 DIRECT EXAMINATION

24 BY MR. CURRAN:

25 Q Mr. LaSalata, I am going to ask you to speak

2 right into the microphone, all right?

3 A Yes, sir.

4 Q Where do you live?

5 A 1606 Merry Avenue.

6 Q Where is that located, what borough?

7 A In the Bronx.

8 Q For about how long have you lived there?

9 A Up to today?

10 Q When did you move there?

11 A Oh, I'm sorry. In '71.

12 Q Do you remember the month?

13 A In May -- I mean, I'm sorry, in July.

14 Q Do you have a nickname?

15 A Yes.

16 Q What is it?

17 A Sharp, Joe Sharp.

18 Q Joe Sharp?

19 A Yes.

20 Q How long have you had that nickname, about?

21 A When I was about 12, 14 years old.

22 Q You have had it ever since?

23 A Right.

24 Q People call you Joe Sharp?

25 A Not all the time. You know, Joe, you know.

2 Q But that is your nickname?

3 A Right.

4 Q Do you know a man named Butch Pugliese?

5 A Yes.

6 Q I ask you to stand up, look around the court-
7 room and tell us if you see Butch Pugliese in the court-
8 room.

9 A There he is (indicating).

10 MR. CURRAN: Your Honor, may the record
11 show that the witness pointed to the defendant Pugliese,
12 who was standing.

13 Q Is that Butch Pugliese?

14 A Yes, sir.

15 Q The man who just stood up?

16 A Yes, sir.

17 Q Directing your attention, Mr. LaSalata, to some
18 time after Labor Day of 1971, shortly after you moved to
19 the Bronx, did you see Butch Pugliese?

20 A Yes.

21 Q Where did you see him?

22 A I met him on Crosby Avenue coming home from
23 work.

24 Q Did you have a conversation with him then?

25 A Yes.

Q Did there come a time after that, directing your attention to late September or early October, when he rented your garage?

A Yes.

Q Did he pay for a garage rental?

A Yes.

Q Did he rent it for a particular period of time?

A For October.

Q For the month of October?

A October, yes.

Q 1971?

A Right.

Q Who did he pay?

A Well, he paid me, my wife.

Q At your house?

A At my house, yes.

Q How much did he pay?

A \$25.

Q In about the month of October did he introduce you to a man named John?

A Yes, a man named John, but I didn't get his last name at the time, you know.

Q But he was introduced to you by Butch Pugliese?

A Yes, sir.

2 Q When Butch Pugliese rented the garate for
3 the month of October did he tell you why he was renting
4 the garage?

5 A No. I just took it for granted it was for
6 his car.

7 Q Did he put a car in the garage, to your knowl-
8 edge?

9 A No.

10 Q Did there come a time in October when you had
11 a conversation with Butch Pugliese about a box in the
12 garage?

13 A Yes.

14 Q Will you tell us, please, what you said and
15 what he said?

16 MR. FISHER: Objection, if your Honor
17 please, on the grounds of hearsay. As far as I know,
18 this witness has not been named as a co-conspirator.

19 MR. CURRAN: Your Honor, I --

20 THE COURT: No.

21 MR. CURRAN: Your Honor, two points: He
22 was talking about a conversation with the defendant
23 Pugliese and, secondly, I believe the bill of particulars
24 states that a Joe Sharp is a co-conspirator.

25 THE COURT: Yes, I am aware of it. I will
permit the conversation.

3
2 Q Do you remember the question, Mr. La Salata,
3 that I just asked you?

4 THE COURT: Would you repeat it.

5 MR. CURRAN: Yes, sir.

6 Q When you had this conversation with him about
7 a box in the garage what did you say and what did he say,
8 as best you remember?

9 A Well, I asked him -- you know, it was almost at
10 the end of the month, and I said to him, you know, "If
11 you're going to keep the garage or not," because I had
12 someone else that wanted the garage, "and that if you have
13 anything in the garage," which I noticed there was a box,
14 I told him, "you could take that out."

15 He in turn, he said to me, "Well, it actually
16 don't belong to me, it don't belong to me, it belongs to
17 this fellow John," he said, "the fellow that you met."

18 I said, "All right. Let him come over and I'll
19 give it to him."

20 And that was it.

21 Q Did there come a time when John got in touch
22 with you?

23 A Yes.

24 Q How did he do that, in person or by telephone?

25 A Well, at the time I told him, you know, "You

1
2 know my number, give him my phone and let him call me up
3 and I'll give him the box."

4 Q Did John call you after that?

5 A Yes, he did.

6 Q Did he have a conversation with you?

7 A No. Just that he told me, "I'm coming over and
8 I'll pick up the stuff that was in the box, you know, them
9 bags." He said actually bags, you know.

10 Q He said bags?

11 A Bags. They were packed bags, yes.

12 Q What happened then?

13 A And then that night when he called me he came
14 over.

15 Q Came over where?

16 A Over my house, at 1606 Mary Avenue. On the
17 phone he told me, "I don't want all of them."

18 MR. ROSENBERG: Your Honor, I am going to object
19 now to the conversation with respect to John. That would be
20 hearsay now. It hasn't been established that John is a
21 co-conspirator.

22 THE COURT: I understand, but I am going to permit
23 it. Go ahead.

24 Q Mr. La Salata, I think you were testifying that
25 John talked to you about bags.

2 A Yes. I said to him, "Well, I'm going to give you
3 them all, I'm going to give you the box."

4 He said, "No." He said, "Take out one," and
5 he said, "Bring it outside and I'll take it off you."

6 And that's what I did. I brought it outside and
7 I told him, "When you going to come over for the other
8 things?"

9 And he said to me, "I'll come over tomorrow or
10 the next day."

11 And I gave him the bag and he went away.

12 Q This is the first time, is that right?

13 A Right.

14 Q Where did you give John the bag?

15 A Right maybe about a hundred feet, one hundred and
16 fifty feet away from my house, towards Zulette.

17 Q In the evening?

18 A Evening, yes.

19 Q Were you walking your dog?

20 A Right.

21 Q What did the bag that you gave him look like?

22 A Just an ordinary paper bag, brown paper bag,
23 sealed, and that was it.

24 Q With your hands, Mr. La Salata, would you just
25 show us about how long and how high you remember it being?

1
2 A About that big.

3 Q About that long?

4 A Yes.

5 MR. CURRAN: Your Honor, indicating about six
6 inches?

7 THE COURT: Yes.

8 Q And about how high?

9 A Well, maybe about that.

10 MR. CURRAN: Indicating, your Honor, about three
11 inches?

12 A No.

13 Q Two inches?

14 A About an inch and a half, two inches, like that.

15 Q Was this bag sealed?

16 A Yes, sir.

17 Q Did you ever look in it?

18 A No, sir.

19 Q Could you feel it?

20 A Well, I didn't feel it. I just held it, you
21 know. Whatever was in my hand felt a little stiff and that
22 was it, you know.

23 Q Did anybody, Butch Pugliese or John, ever tell
24 you what was in the bag?

25 A Yes, Butch did.

2 Q What did he tell you?

3 A He says, "Don't worry about it." He says, "They
4 are only football tickets."

5 Q Football tickets?

6 A Yes, football tickets.

7 Q Did there come a time when John called you again?

8 A Yes. Maybe another day later. He skipped a day
9 and then he came over.

10 He called me and he said the same thing, which I
11 told him, I said, "Take them."

12 He said, "No, I'll come over only for one more
13 and then the next day I'll get the other one."

14 And that was it.

15 Q Did he get the second one?

16 A Yes, sir. I brought it right out the door.

17 Q On the street?

18 A Yes. I told him, "Meet me near my house and
19 I'll give it to you."

20 Q And did you give it to him?

21 A Yes, sir.

22 Q Did there come a third time?

23 A Yes, sir.

24 Q Did he telephone you?

25 A Yes, sir.

1
2 Q Did you give him a bag?

3 A Right.

4 Q The same kind of bag each time?

5 A Right, there were three bags, right.

6 Q Where did you get those bags to give to him?

7 A Well, the story was this, that my wife one day
8 noticed that Mr. Pugliese went into the garage --

9 MR. ROSENBERG: Objection, if your Honor please.

10 MR. CURRAN: I will withdraw that, your Honor.

11 THE COURT: All right.

12 Q Let me ask you this question, Mr. La Salata:
13 Where did you get the bags each time you gave
14 them to John?

15 A Oh. In the garage.

16 Q Did you take them out of the box?

17 A Yes, sir.

18 Q Was there anything else in the box?

19 A There was -- I think it was a screwdriver or
20 something in there with a pliers or something.

21 Q What kind of box was this?

22 A A carton, regular cardboard carton.

23 Q On any of the occasions did John pay you any
24 money?

25 A The last time, sir.

1
2 Q What did he give you?

3 A He gave me a hundred dollars.

4 Q Is that the last time you saw John?

5 A Yes, sir.

6 MR. CURRAN: Would your Honor bear with me one
7 moment, please.

8 THE COURT: Sure.

9 (Pause.)

10 Q Mr. La Salata, I show you Government's Exhibit
11 20-A in evidence and I ask you if you recognize the man on
12 the left of that picture.

13 A No, sir.

14 Q You never saw him before?

15 A Oh, this man here?

16 Q On the left, yes.

17 A I'm sorry. I thought you meant on the right.
18 Yes, he looks like the fellow.

19 Q What fellow?

20 A The fellow John.

21 Q The man you delivered the package to on three
22 occasions?

23 A Yes, sir.

24 Q How much time do you estimate elapsed between the
25 time you made the first delivery to him and the second and

2 the third, approximately?

3 A I'll say every other -- every two days or so,
4 like that. I actually don't know really, you know,
5 because this was in '71, you know, and I don't remember.
6 I know it was in --

7 Q It's your understanding these were football
8 tickets, is that correct?

9 A Yes, sir. That's what was understood to me.

2 10 Q You know Izzy's Luncheonette on Westchester
11 Avenue?

12 A Yes, sir.

13 Q Were you ever there with John and Butch at any
14 time?

15 A I met them just before this happened.

16 Q At Izzy's?

17 A I went to buy the papers there and I met the two
18 of them.

19 MR. CURRAN: Your Honor, I request permission
20 to show again Government's Exhibit 20-A in evidence to the
21 jury.

22 THE COURT: Yes.

23 Q Mr. La Salata, I have one other question, I
24 think.

25 When you got the hundred dollars from John on

the last occasion --

A Yes, sir.

Q -- how did he hand that to you?

A He just -- it was folded, you know, he put it out the window and I took it, and he just said, "Good night," and he went off.

Q Did you look at it right away?

A No, sir, no, sir.

Q When did you look at it, later on, after you got home?

A Yes, when I walked in the house.

MR. CURRAN: I have no further questions, your Honor.

MR. SIEGAL: Maybe have a limiting instruction at this time, Judge, that the evidence that just came in is not binding on Mr. Tramunti.

THE COURT: It's not binding upon any of the defendants except the defendants who are named in the testimony. We will get to the whole subject during the charge. You should recognize that right now.

Mr. Rosenberg, I suggest we hold up for a minute and let the jury take a look at the picture.

(Pause.)

CROSS EXAMINATION

BY MR. ROSENBERG:

Q Sir, my name is Theodore Rosenberg. I represent Butch Pugliese.

You stated that it was some time in September that the garage was rented?

A No, no. In October.

Q It was rented in October?

A October.

Q You say that you had a conversation with Pugliese some time during the end of October?

A September.

Q I am sorry. You had a conversation with respect to renting the garage for the month of October, is that right?

A Yes, sir.

Q Some time towards the end of October you had a conversation with Butch Pugliese, is that correct?

A Yes.

Q With respect to the garage, right?

A Yes, sir.

Q And you told him to take the box out, am I correct?

A Right.

Q And he told you that it wasn't his box and he wasn't concerned about it, is that right?

A Yes, sir.

Q He had nothing to do with the box, is that right?

A Right, right.

Q And he indicated that it was a friend of his that perhaps he did a favor for or something like that, but in any event, it wasn't his, is that right?

MR. CURRAN: Objection, your Honor.

THE COURT: No, I will permit it. Go ahead.

Q You understand the question, sir?

A Yes.

Q What is your answer to that?

A Will you repeat that again, please?

MR. ROSENBERG: Will you have him repeat it.

THE COURT: Mr. Reporter, would you repeat it, please.

(Question read.)

A Yes.

Q There came a time when this John did call you, is that correct?

A Yes, sir.

Q And John told you that it was his box, is that right?

1
2 A Well, he said that he was coming over to pick
3 up.

4 Q John never said that it was Butch's box, he said
5 it was his own, is that right?

6 A He didn't say nothing like his own or -- he just
7 said, "I'll be over and pick up the box."

8 Q At any rate, after Butch told you, Butch
9 Pugliese, told you that he had no interest in the box,
10 it was John who called you and said that he owns the box
11 and he will claim the box and he will take the stuff out
12 of the box, is that right?

13 A Well, you know, not in them words.

14 Q Not in them words, but this in substance is what
15 he was saying, is that correct?

16 A He said, "It don't belong to me, it belongs to
17 my friend John, and he has to pick it up."

18 Q And when John spoke to you John also indicated
19 that it was his box and he was going to pick it up?

20 A He just said that, "I'll be over and pick up the
21 box."

22 Q John never said it was Butch's box, did he?

23 A No. There was no conversation in that respect
24 at all.

25 Q Did you speak to John with respect to what was

inside?

A No, sir.

Q You never knew at that time and you don't know at this time what was in those boxes, is that correct?

A Only that they were football tickets.

Q And you don't know anything to the contrary, is that correct?

A Right, right.

MR. ROSENBERG: I have no further questions, your Honor.

MR. ELLIS: Mr. Curran, may I see Exhibit 20-A, please.

CROSS EXAMINATION

BY MR. ELLIS:

Q Mr. La Salata, you said that at the time you didn't know John's last name. Do you know it now?

A Yes.

Q Tell us John's last name, please.

A Barnava, the way I could understand it, Barnava.

Q A moment ago Mr. Curran showed you this picture, is that correct?

A Yes, sir.

Q Is he the one with the number 2 over his head?

A Yes, this is the fellow here.

2 Q With the number 2 over his head, is that correct

3 A I can't see the number 2, you know. There is a
4 marking there.

5 Q With the dark shirt?

6 A Yes, sir.

7 MR. ELLIS: Thank you. No further questions.

8 FURTHER CROSS EXAMINATION

9 BY MR. ROSENBERG:

10 Q Sir, as long as that box was in the garage you
11 yourself had access to that garage, am I correct?

12 A No, sir.

13 Q Did you have --

14 THE COURT: Make the word "access" something else
15 Could you get in and out of the garage by yourself
16 while the box was there?

17 THE WITNESS: I guess so, yes. You know, if
18 you open up the garage door.

19 Q I am not suggesting that you had gone into the
20 garage. I am suggesting that if you wanted to go into the
21 garage you could have gone into the garage at any time you
22 wanted, is that correct?

23 A Yes, sir.

24 Q That is all I am asking you.

25 MR. ROSENBERG: Thank you.

THE COURT: Does anybody else wish to inquire?

CROSS EXAMINATION

BY MR. SIEGEL:

Q Sir, you have never been convicted of a crime, have you?

A No, sir.

Q Did you at any time knowingly deal in narcotics with this John Barnaba?

A No, sir.

Q Did you ever act as a stash or a hiding place for narcotics for John Barnaba?

A No, sir.

Q Did you ever give any of these packages to John Barnaba at Izzy's Luncheonette?

A No, sir.

Q Would I be correct in stating that your major conversation with this person John was on the subject of pigeons?

A Yes, sir.

Q So if Mr. Barnaba would say that you were his partner in narcotics he would be lying?

MR. CURRAN: Object to the form of that, your Honor.

THE COURT: Yes.

MR. SIEGEL: I withdraw that. No further questions, your Honor.

THE COURT: Anybody else wish to inquire?

All right, Mr. Curran.

REDIRECT EXAMINATION

BY MR. CURRAN:

Q Is it your testimony, Mr. La Salata, that you didn't look at the hundred dollars that Barnaba gave you until you got home?

A Yes, sir.

Q You put it in your pocket right away?

A Yes, sir.

Q It came as no surprise to you that he handed you money then, did it?

MR. LOPEZ: Objection.

MRS. ROSNER: Objection.

THE COURT: No, I will permit it.

Q You may answer.

A The question again, please.

Q It came as no surprise to you, did it, that he handed you money?

A No. The reason --

THE COURT: No, don't give the reason.

Q Was that a hundred-dollar bill?

2 A Right.

3 Q That was for the football tickets?

4 A No, sir.

5 MRS. ROSNER: Objection, your Honor.

6 THE COURT: He doesn't know what it was for.

7 A No, sir.

8 Q Who put the box in the garage?

9 A I don't know.

10 Q Did Butch ever tell you he put it in?

11 MR. ROSENBERG: Objection.

12 A No.

13 Q You are certain of that?

14 A Yes.

15 MR. ROSENBERG: I will withdraw the objection.

16 THE COURT: All right.

17 Q You have known Butch Pugliese a long time, haven't
18 you?

19 A Yes, sir.

20 Q He is a pretty good friend of yours, isn't he?

21 A Well, he's a boy that I knew, you know, when he
22 was a little boy and he is actually raised in the neighbor-
23 hood where I was, and then I didn't see him for about five
24 or six years, like that, until I moved up to the Bronx.

25 Q But you regard him as a friend of yours, don't

1
2 you?

3 A Yes.

4 MR. SIEGEL: Your Honor, I believe Mr. Curran is
5 trying to impeach his own witness.

6 THE COURT: I know what he is doing. Go
7 ahead.

8 Q I think you testified in response to some
9 questions from Mr. Siegel, the gentleman who just objected,
10 that you never acted as a stash for John Barnaba.

11 A No, sir.

12 Q Do you know what a stash is?

13 A No, sir.

14 Q So when you testified in response to that question
15 from Mr. Siegel a minute ago that you never had done it you
16 didn't know what you were saying, did you?

17 A No, sir.

18 Q As a matter of fact, Mr. La Salata, you visited
19 Mr. Pugliese several times in 1972, didn't you, outside of
20 New York City?

21 A Yes, sir.

22 A Accompanied his family?

23 A Yes, sir.

24 Q Mr. La Salata, you remember January 16, 1974,
25 about a month ago?

1
2 A Yes, sir.

3 Q Do you remember being in Mr. Phillips' office in
4 this building?

5 A Yes.

6 MR. FISHER: Objection, if your Honor please, to
7 the whole line of inquiry, and I ask to approach the side
8 bar.

9 THE COURT: I don't know where the line of
10 inquiry is going. Come on up.

11 (At the side bar.)

12 THE COURT: I assume you are guessing as to where
13 it's going. Let's hear your guess.

14 MR. FISHER: If your Honor please, I think this
15 is only a slightly modified version of the government sand-
16 bag play.

17 This witness is known to the government. His
18 testimony here, so far as I have been able to learn from
19 the witness's lawyer, is perfectly consistent with what he
20 has told the government. Therefore, the government cannot
21 come in here and claim surprise.

22 They are trying to impeach his testimony at this
23 point knowing in advance that he was going to give this
24 testimony, because this testimony is perfectly consistent
25 with what his lawyer told us a few moments ago.

1
2 MR. CURRAN: May I be heard, your Honor?

3 THE COURT: Sure.

4 MR. CURRAN: Obviously I am claiming not only
5 surprise but hostility. It's clear from the way he has
6 answered questions and from his demeanor and from his
7 response to defense counsel's questions that he is not a
8 government witness.

9 What I propose to do now is simply ask him about
10 certain statements he made in the light of cross-examination
11 what came out, to Mr. Phillips and to agents.

12 MR. ROSENBERG: That he knew what was there?

13 MR. CURRAN: Yes, that he said that he knew
14 what was there on January 16th.

15 MR. ELLIS: Did he identify the substance that
16 was there or did he just say, "I knew what was there,"
17 believing it to be football tickets?

18 MR. CURRAN: We will develop that. But he
19 identified the substance and said he knew it was not
20 narcotics in response to questions by Mr. Phillips.

21 MR. FISHER: Your Honor, I represent to this
22 Court that this witness's lawyer told me moments ago that
23 as far as he was concerned he had told the government that
24 his client maintained that he did not know what was in those
25 packages.

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2
3 MR. CURRAN: That is his position, your Honor,
4 this week. No question about it.

5 MR. FISHER: I don't think the government
6 has a right to put him on knowing that and then impeach
7 him.

8 MR. CURRAN: Just a minute, your Honor.
9 I didn't start this.

10 THE COURT: I understand.

11 MR. CURRAN: Mr. Fisher is perfectly right. I
12 don't want to mislead the Court. This week his statement
13 to me has been that he thought they were football tickets.

14 My point, your Honor, is that on January 16th
15 he made different statement to Mr. Phillips and two agents.

16 MR. LEIGHTON: Could we hear that statement?

17 THE COURT: Yes. The statement is that he knew
18 there were narcotics in the bag.

19 MR. ELLIS: Was it written down?

20 MR. CURRAN: No, he didn't make a written
21 confession.

22 MR. ELLIS: Nobody took any notes?

23 MR. ROSENBERG: An oral statement?

24 MR. CURRAN: Yes.

25 MR. ROSENBERG: Made to whom?

MR. CURRAN: Mr. Phillips and two agents.

1
2 MR. PANZER: Your Honor, clearly if this comes
3 in it's after the conspiracy is ended. It's not binding
4 on any of the other defendants.

5 I would ask for either a severance at this point,
6 because that is the problem when you have many defendants
7 in a case, or for a cautionary instruction to the jury.

8 MR. FISHER: I join in that.

9 MR. CURRAN: I think there is a respectable
10 argument that it could be binding. I am not going to press
11 that at this time.

12 My position is that I have no objection to a
13 limiting instruction if his Honor wants to give it again.

14 THE COURT: I already gave it.

15 MR. FISHER: May I have a continuing objection.

16 THE COURT: Oh, yes.

17 MR. CURRAN: I should also say in fairness to
18 counsel, since they are all up here, that I don't know what
19 he is going to say now that he is under oath in response
20 to this line of questioning. He may very well say that he
21 never said that. I don't know the answer. But he is under
22 oath now and I have an obligation to pursue it.

23 MR. LEIGHTON: We should have an in camera hearing
24 I think, Judge, hear what this witness is going to say in
25 the presence of the jury.

1
2 THE COURT: I don't think so, no.

3 MR. SIEGEL: Your Honor, if I can add my two
4 cents at this time --

5 MR. ELLIS: Maybe Mr. Atlas ought to be here.

6 MR. SIEGEL: I don't think there has been any
7 showing by this witness's demeanor or his presence on the
8 witness stand that he is either hostile toward the
9 government or pro defense. He just appears to me to be
10 testifying to what he knows.

11 Mr. Curran's line of questioning where he
12 attempts to impeach his own witness I think is improper at
13 this time.

14 THE COURT: No, I think it's proper. I will
15 permit it. Everybody has a continuing objection.
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La Salata-redirect

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4A CONTINUED REDIRECT EXAMINATION

BY MR. CURRAN:

Q Mr. La Salata, directing your attention to the evening of January 16th, about 9.30 on that evening, were you in Mr. Phillips' office in this building?

A Yes, sir.

Q And was Mr. Phillips there?

A Yes, sir.

Q And was Detective Wysocki there?

A Well, there was some there, but I didn't know their names.

Q A couple of agents or police officers?

A Police officers as far as I can --

Q At that meeting, did Mr. Phillips ask you questions?

A Yes, sir.

Q And did you answer his questions?

A Yes, sir.

Q And did you answer his questions truthfully, to the best of your ability?

A Yes, sir.

Q Did Mr. Phillips ask you on January 16th in his office --

MR. ROSENBERG: Objection to form.

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La Salata-redirect

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2 Your Honor, what Mr. Phillips asked him cannot
3 possibly be binding on any defendant here.

4 THE COURT: Yes. I will let it go. I will let
5 it go.

6 Go ahead.

7 Q Did Mr. Phillips ask you in his office if you
8 knew what was in the packages?

9 A No, sir.

10 Q You are certain of that?

11 A Yes, sir. You know, I don't recall too well,
12 but I don't recall him saying anything.

13 Q Did Mr. Phillips ask you if you knew that there
14 were narcotics in those packages?

15 A No, sir.

16 MR. ROSENBERG: I object, if your Honor please.
17 He already answered no --

18 THE COURT: He answered no again.

19 MR. ROSENBERG: I recognize it. Obviously the
20 second question was to prejudice the situation.

21 No, I don't think so. All right.

22 Q Did you tell Mr. Phillips at that meeting that
23 each time that John delivered a package to you, he gave you
24 a hundred dollars?

25 A No, sir.

1
2 THE COURT: Hold it.

3 MR. ROSENBERG: Objection.

4 THE COURT: Yes.

5 Mr. Reporter, read the record back for Mr. Curran
6 alone.

7 Come up here and let the reporter read back that
8 question.

9 (At the bench, record read.)

10 (In open court.)

11 MR. CURRAN: Thank you, your Honor, I misspoke.

12 THE COURT: I assume the question is withdrawn.

13 MR. CURRAN: Yes, it is.

14 MRS. ROSNER: Might I suggest if there is some-
15 thing that might be shown the witness to refresh his recol-
16 lection that that be done, because the impeachment process
17 might be obviated by it.

18 THE COURT: I understand that.

19 All right, go ahead.

20 BY MR. CURRAN:

21 Q At this meeting with Mr. Phillips on January 16,
22 did you tell him, Mr. Phillips, that each time you delivered
23 a package to John, you got a hundred dollars?

24 A No, sir.

25 MR. ROSENBERG: No, sir.

Q And you are certain of that?

A Yes, sir.

THE COURT: The objection is overruled.

MR. CURRAN: I have no further questions.

THE COURT: All right.

RE CROSS EXAMINATION

BY MR. ROSENBERG:

Q Sir, when were you arrested with respect to this matter?

Do you understand the question?

A Yes, but --

Q All right. I will withdraw it.

When for the first time did any agent come to your home? Do you remember the date?

A The 16th.

Q Is that first time any agent came to your home?

A Yes, sir.

Q And --

THE COURT: When you say the 16th, you mean January 16, 1974?

Q Of this year. That is the first time, is that correct?

A Yes, sir. Yes, sir.

Q How many agents came to your home at that time?

1
2 A Two.

3 Q And did they advise you of your rights at that
4 time?

5 A Yes, sir.

6 Q And did they ask you whether or not you wanted a
7 lawyer?

8 A Yes, sir.

9 Q And did you tell them anything at that time with
10 respect to wanting a lawyer?

11 A I just -- I didn't say nothing at all. I
12 didn't --

13 Q Did they tell you you were under arrest?

14 A Yes, sir.

15 A And did they tell you that you have a right
16 to get a lawyer at that time?

17 A Yes, sir.

18 Q And did they permit you to make a telephone call
19 to a lawyer?

20 A Well, yes, sir, but I didn't -- yes, sir. Yes,
21 sir.

22 Q Did they permit you to make a phone call to a
23 lawyer?

24 A No, sir. No, sir.

25 Q Did they specifically stop you from making a

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La Salata-recross

1
2 telephone call to a lawyer?

3 A No, sir. No, sir.

4 Q How long was your interview with Mr. Phillips?

5 A I'd say about -- I don't know. About four hours
6 I guess, something like that.

7 Q Four hours?

8 A Three, four hours. I don't know actually how
9 many hours it was.

10 Q And the other detectives and agents, did they
11 join into this questioning of you?

12 A Yes, sir.

13 Q And this concerns the box that Barnaba had in
14 your garage, am I correct?

15 A Well, that's what it was all about, I guess.

16 Q Did they suggest other names to you from time to
17 time during this interview?

18 A Just Pugliese, that's all.

19 Q After January 16th and after you told them it
20 wasn't Pugliese's box, did they come back again?

21 A They come back about three days later, something
22 like that.

23 Q Three days later?

24 A I don't know. A week later. I don't actually
25 know the date, you know.

1
2 Q All right. About a week.

3 And how many agents came to your home?

4 A Two, I think there were.

5 Q And did they advise you that you were under arrest
6 at that time?

7 A Yes, sir.

8 Q They told you the first time that you
9 were under arrest and they told you the second time that
10 you were under arrest, is that right?

11 A Well, they didn't -- they didn't actually say I
12 was under arrest, they just wanted to talk to me, actually.

13 Q Did they flash their badges, something like that,
14 "We want to talk to you"?

15 A Yes, right.

16 Q Did they tell you you had a right to a lawyer
17 the second time now?

18 A No, sir.

19 Q They didn't?

20 A No, sir. No, sir.

21 Q Did they tell your wife or did they tell you in
22 your wife's presence for your wife not to call a lawyer?

23 A They just told my wife not to call anybody.

24 Q They told your wife not to call anybody, is that
25

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La Salata-recross

correct?

A Anybody, right.

Q And the first time that they interviewed you for three or four hours when they told you you were under arrest, did they arraign you the following day or did they let you go home?

A They let me go home.

Q Good.

Now, the second time when they told your wife, "Don't call anybody," and they brought you down to their office again, again did you speak to Mr. Phillips?

A No, sir.

Q Who did you speak to this time?

A Just to the detective.

Q And where did they bring you?

A They brought me to -- I don't know. They had -- I don't know where it was. In the Bronx some place.

They wanted to talk to me.

Q And how long did they keep you there?

A I'd say about -- about 20 minutes, a half-hour, that's all.

Q And did they drive you back?

A Yes, sir.

Q All right. How long was the trip up?

1
2 A About 20 minutes.

3 Q So in total you were in their presence for
4 approximately an hour, correct?

5 A Yes, sir.

6 Q And during that time did they again refer to the
7 box that was in your garage?

8 A No, sir.

9 Q They were talking about something else?

10 A Yes, sir.

11 Q You weren't booked on that occasion, were you?

12 A No, sir.

13 Q Did they come a third time to your house?

14 A Yes, sir.

15 Q And, again, did they advise you of your right to
16 an attorney?

17 A No, they didn't say anything about that at all.

18 Q Did they specifically tell your wife, "Don't call
19 a lawyer, don't call anybody"?

20 A No, they didn't say nothing.

21 Q Did they tell you not to call anybody?

22 A No, sir.

23 Q Where did they take you on this occasion?

24 A They brought me downtown, down here, down to this
25 building.

Q Question you again?

A Yes, sir.

A And who questioned you this time?

A Mr. --

Q Phillips, Curran?

A Mr. Curran.

Q And how long did Mr. Curran talk to you?

A About five, ten minutes.

Q And then you were booked?

A No.

Q You weren't booked then?

A Then I told him -- then I told him, I said, "I'm not going to talk because I want to see an attorney," and he told me not to say nothing, and that's the way I left him off, and he said, "All right, go ahead."

Q Then you went home again?

A I went home again.

Q Then after that they arrested you?

A Yes, sir.

Q Okay.

MR. ROSENBERG: I have no further questions.

THE COURT: Do you wish to inquire, Mr. Siegel?

MR.SIEGEL: Yes, I do, your Honor.

RECROSS EXAMINATION

BY MR. SIEGEL:

Q Sir, Mr. Curran asked you on his redirect examination if you knew what a stash was and you said no.

Do you know what the word or the term hiding place means?

A No, sir.

Q Have you ever heard the word hiding place?

A Oh, hiding, yes.

Q Yes, hiding place?

A Hiding place, yes, sir.

Q Did you ever use your garage as a hiding place for John Barnaba's narcotics?

A No, sir.

Q What was your reaction when you came home and you saw Mr. Barnaba had given you \$100? Were you surprised?

A I was surprised, yes.

MR. SIEGEL: No further questions.

THE COURT: All right. Does anybody else wish to inquire?

Mr. Curran?

MR. CURRAN: Yes.

REDIRECT EXAMINATION

BY MR. CURRAN:

Q Mr. LaSalata, you were arrested on January 16th by agents, right?

A Yes, yes.

Q At your home?

A Right.

Q Around 5 o'clock, 5:30?

A Something like that, yes, sir.

Q And you were brought to this building?

A Yes, sir.

Q By the agents or the officers?

2 A Yes, sir.

3 Q And you met Mr. Phillips?

4 A Yes, sir.

5 Q Somewhere around 6:30, 7 o'clock.

6 A Well, in that, you know.

7 Q In that area?

8 A In that area.

9 Q And you talked with Mr. Phillips and the
10 agents for a period of time, didn't you?

11 A Yes, sir.

12 Q And you discussed with them and they discussed
13 with you cooperation with the government?

14 A Yes, sir.

15 Q Isn't that right?

16 A Yes, sir.

17 Q And at that meeting you told Mr. Phillips and
18 the agents that you wanted to cooperate with the government,
19 didn't you?

20 A Yes, sir.

21 Q And then you said on that basis you were told
22 you could go home?

23 A Yes, sir.

24 Q And then you talked with the police officers
25 after that, didn't you, for a few days, off and on?

1
2 A Yes, sir. Yes, sir.

3 Q About possible cooperation?

4 A Yes, sir, possible.

5 Q In connection with narcotics cases?

6 A Yes, sir.

7 Q Then there came a time about a week after your
8 arrest --

9 MR. ROSENBERG: Your Honor, I am going to ob-
10 ject to this, if your Honor please. It is not part
11 of the redirect. This is a conversation with respect
12 to narcotics cases --

13 THE COURT: I understand.

14 MR. ROSENBERG: I can't see how it is binding
15 on the defendants.

16 THE COURT: No, I think it is proper redirect.
17 I will permit it.

18 Go ahead.

19 Q There came a time about a week after that when
20 you came down to my office, didn't you?

21 A Yes, sir.

22 Q And you saw me for the first time?

23 A Yes, sir.

24 Q Is that right?

25 A Yes, sir.

1
2 Q And there were agents present?

3 A Yes, sir.

4 Q You came down there voluntarily, didn't you?

5 A Yes, sir.

6 MRS. ROSNER: Objection, your Honor.

7 Q Of your own free will?

8 A Yes, sir.

9 THE COURT: I will permit it.

10 Q You weren't dragged down there by police
11 officers?

12 A No, sir.

13 Q You met with me, right?

14 A Yes, sir.

15 Q You told me --

16 MR. ROSENBERG: Objection to what he told Mr.
17 Curran, if your Honor please.

18 THE COURT: No, I will permit it.

19 MR. ELLIS: I object to the form of the
20 question.

21 THE COURT: I don't know what the form of
22 the question is yet.

23 MR. ELLIS: He asked --

24 THE COURT: Go ahead, ask the question.

25 Q Did you tell me after thinking it over you had

1
2 talked to a lawyer?

3 A Yes, sir.

4 Q You did that, didn't you?

5 A Say that again, sir?

6 Q After thinking things over, you said you had
7 talked to a lawyer, didn't you?

8 A Yes, sir.

9 Q And you decided you didn't want to cooperate
10 any more?

11 MR. ELLIS: Objection.

12 A I said I didn't -- my lawyer advised me not to
13 talk.

14 MRS. ROSNER: Your Honor, I object to this
15 entire line of questioning on the ground that postarrest
16 declarations are hearsay with respect to all defendants
17 on trial and I ask for a limiting instruction as to this
18 entire line of questioning.

19 THE COURT: It was opened up on cross, it is
20 permissible --

21 MRS. ROSNER: Not by my client, your Honor.

22 THE COURT: I did not say you did.

23 I think I have already given a limiting
24 instruction to the jury and I think they are able to
25 remember that instruction and I am sure that they will.

MRS. ROSNER: If I may, your Honor, my point is that this evidence, even assuming that other hearsay is connected, is inadmissible against anyone on trial.

THE COURT: I understand it. This has nothing to do with any defendants at all.

Go ahead, Mr. Curran.

BY MR. CURRAN:

Q You told me you talked to a lawyer, is that correct?

A Yes, sir.

Q And you didn't want to cooperate with the government any more?

A I just didn't want to talk, yes.

Q You didn't want to talk?

A Right.

Q And I told you if that was the advice from your lawyer, you shouldn't talk, right?

A Yes, sir.

Q And then --

A Say that again, sir?

Q I told you that if your lawyer told you not to talk, then you shouldn't talk to me?

A Yes, sir.

Q Didn't I tell you that?

1
2 A Yes, sir.

3 Q And then after that didn't you say to me, "Every
4 thing I told Mr. Phillips was the truth"?

5 MR. ROSENBERG: Objection, if your Honor please.

6 THE COURT: I will permit it.

7 Go ahead, answer it.

8 A Everything I told Mr. Phillips -- yes, sir.

9 Q You told me that?

10 A Yes, sir.

11 Q On February 8th you were arraigned, is that
12 right?

13 A Yes, sir.

14 Q And you came down with your by telephone call,
15 didn't you?

16 A Yes, sir.

17 Q You weren't arrested on February 8th and
18 brought down here by agents, were you?

19 A No, sir.

20 MR. CURRAN: No further questions, your
21 Honor.

22 THE COURT: All right.

23 MR. ROSENBERG: Your Honor, may we approach
24 the side bar, please?

25 THE COURT: Yes.

(At the side bar.)

MR. PANZER: Your Honor, I want to make a motion.

THE COURT: Yes.

MR. PANZER: My motion -- maybe Mr. Phillips ought to hear this, and Mr. Curran.

My motion at this time is for a mistrial on the grounds of Unites States vs. Puco.

I understand the Puco case involved the cross examination of a defendant and we are now dealing with a witness in this situation, but Mr. Curran, through his cross examination, has now injected the credibility of Mr. Phillips, and Mr. Phillips has not taken the stand, and I think that is improper under the circumstances.

At this time I move for a mistrial.

MR. CURRAN: Your Honor, if I may be heard, as I recall the Puco case, there was an assistant U. S. attorney talking to a defendant alone. Among other distinctions, the evidence clearly shows here that Mr. Phillips was in the presence of at least two agents, and when I talked to the defendant a week or so after the arrest I was in the presence of a couple of agents. under the facts it is totally dissimilar in view of the fact that Puco was a defendant.

1
2 MR. PANZER: I still feel the government has
3 no injected its credibility without taking the stand.

4 THE COURT: The motion for a mistrial is
5 denied.

6 MR. LEIGHTON: We all join in it.

7 THE COURT: Everybody is in it.

8 MR. ROSENBERG: Judge, I wasn't going to
9 move for a mistrial necessarily, but consistent with that
10 I will tell you what the problem seems to be now.

11 He said he had a conversation with Mr. Phillips.
12 Now, Mr. Curran asks, "Did you say this to Mr. Phillips
13 and did Mr. Phillips say this to you?" and he then denies
14 saying this. All right?

15 Now, the last question that he is putting to
16 him, "Isn't it a fact that everything you told Mr.
17 Phillips is what you told me was correct," or something
18 in that nature --

19 MR. CURRAN: It is a little bit different.
20 It is. I said to him, "Didn't you tell me that every-
21 thing you told Mr. Phillips was correct?"

22 MR. ROSENBERG: Right.

23 On your question originally to your own witness
24 that you later decided to impeach, you are questioning
25 with respect to "Did you tell Mr. Phillips this?"

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La Salata-

1 He dies it. "Did you tell Mr. Phillips this?" He
2 denies it, creating the impression, of course -- which
3 is what he attempted to do, but I indicate that it is
4 very prejudicial -- creating the impression that Phillips'
5 credibility is now an issue so that he denies having told
6 Mr. Phillips this.
7

8 Now Mr. Curran's credibility is compounded by
9 Mr. Phillips' credibility and I cannot go back and cross
10 examine because I don't know just what exactly at this
11 point he was supposed to have said to Mr. Phillips or not,
12 because if I do I know the next move, Mr. Phillips is
13 going to take the stand.

14 I submit that this whole line of questioning
15 is improper, it is very prejudicial, your Honor. The
16 relevancy with respect to Pugliese apparently is no
17 indication by his testimony that Pugliese knew that
18 there was narcotics, there is no evidence by his testimony
19 that he even knew that there was narcotics.

20 They have created an impression by this
21 whole line of cross examination which is so prejudicial
22 and the relevancy as to what they attempted to elicit
23 to begin with was absolutely nothing.

24 MR. CURRAN: If I may, your Honor, very
25 briefly, the door to this whole problem was opened up on

cross examination, not on direct.

If I may, Mr. Rosenberg.

I had a right, indeed a duty, it seems to me, to confront that witness with prior statements that he made in front of police officers and an assistant United States Attorney. He has denied making the statements, but I certainly had an obligation to confront him with that.

This is the first time I had the man under oath and I had every reason to believe the confrontation might have refreshed his recollection and he might have said, "Yes," he did say that, and that would have been proper for those purposes.

MR. ROSENBERG: Mr. Curran, let me tell you this:

I did not open this door. You were the one that asked him on direct examination with respect to the basketball tickets --

MR. CURRAN: Football tickets.

MR. ROSENBERG: He himself on his direct testimony said football. Me, all I did was merely reemphasize the same thing he said on direct. I did not open the door in any area, I merely reemphasized what he said on direct.

I did not know what was there, I thought it was football tickets. My cross was along the same way.

MR. CURRAN: Your Honor, someone on cross --

MR. ROSENBERG: It wasn't me.

MR. CURRAN: -- got into arrests. I remember Mr. Rosenberg asking him about him being arrested twice or three times.

MR. ROSENBERG: Me? I never did.

MR. ELLIS: What does that have to do with it?

MR. ROSENBERG: I ask for a mistrial. I want the whole testimony stricken.

THE COURT: All right. The motion for a mistrial is denied.

MR. ROSENBERG: How about with respect to striking the testimony, your Honor?

THE COURT: Denied.

(In open court.)

THE COURT: All right, Mr. LaSalata, step down. Go with your attorney.

(Witness excused.)

THE COURT: Call your next witness.

MR. CURRAN: The government calls Mrs. Joseph LaSalata.

1
2 E L L A L a S A L A T A, called as a witness
3 by the government, being first duly sworn, testified
4 as follows:

5 THE COURT: Just one minute.

6 Sit back, Mrs. LaSalata.

7 Mr. Reporter, would you come up here to this
8 side bar.

9 (At the side bar.)

10 THE COURT: Side-bar conference with Mr. Atlas
11 and myself.

12 I gather there is no use-immunity situation at
13 all?

14 MR. ATLAS: I discussed this with Mr. Curran.
15 There is not.

16 THE COURT: All right.

17 (In open court.)

18 THE COURT: All right, Mr. Curran.

19 DIRECT EXAMINATION

20 BY MR. CURRAN:

21 Q Mrs. LaSalata, I will ask you to speak into
22 the microphone so we can all hear you, please.

23 A Okay.

24 Q You are Mrs. Joseph LaSalata?

25 A Yes.

1
2 Q And you live at 1606 Merry Avenue in the Bronx?

3 A Yes.

4 Q And you live there with your husband?

5 A Yes.

6 Q Does your husband have a nickname?

7 A Yes.

8 Q What is that?

9 A His name is Joe Sharp.

10 Q Joe Sharp?

11 A Yes.

12 Q Mrs. LaSalata, about when did you and your family
13 move to Merry Avenue in the Bronx?

14 A In July, 1971.

15 Q Mrs. LaSalata, do you know a man named Butch
16 Pugliese?

17 A Yes.

18 Q If he is in the courtroom would you please point
19 him out? Look around and point him out.

20 DEFENDANT PUGLIESE: Here I am.

21 Q Is that man who stood up just then -- is
22 that Butch Pugliese?

23 A Yes.

24 Q Mrs. LaSalata, in late September or early October
25 of 1971 was Butch Pugliese at your house?

2 A Yes.

3 Q Was your husband also there that time?

4 A Yes. He wasn't at my house, he was outside.

5 Q Outside the house?

6 A Yes.

7 Q And did you talk to him then?

8 A Yes.

9 Q Was that about a garage rental?

10 A Yes. He wanted to rent my garage.

11 Q Did he say why he wanted to rent it?

12 A To store a car.

13 Q And did he rent it?

14 A Yes.

15 Q For how long a time? How long a period of
16 time did he rent it?

17 A A month.

18 Q What month?

19 A October.

20 Q 1971?

21 A Yes.

22 Q Did he pay you for that?

23 A Yes. He gave me \$25.

24 Q Did you ever see him put a car in the garage
25 in October of 1971?

2 A No.

3 Q Did there come a time after he rented the
4 garage when you saw Butch Pugliese by the garage?

5 A Yes. He came once on a bicycle I seen him.

6 Q And did he go into the garage?

7 A Yeah. He asked me if he can go in the garage,
8 yes.

9 Q Did there come a time in October, 1971 when you
10 saw a box or a carton in the garage?

11 A That was about -- about a week later, when
12 I was in the basement I was hanging up my clothes and I
13 went into the garage to get my clothespins and I seen the
14 box on the floor.

15 Q You saw a carton there?

16 A Yes.

17 Q You can go into your garage from the base-
18 ment?

19 A Yes.

20 Q And after you saw the carton there did you
21 have a conversation with your husband about the carton?

22 A No. He wasn't home, my husband.

23 Q Later on did you talk to him about it?

24 A Yes.

25 Q And then after that did there come a time when

the carton wasn't there any more?

A Well, I never knew any more. I just told my husband, I was busy, I never went in the garage any more.

Q Mrs. LaSalata, directing your attention to February 9th of this year --

A Yes.

Q -- two weeks ago tomorrow.

A Yes.

Q Tomorrow will be two weeks, Saturday.

A Yes.

Q Did you see the defendant Butch Pugliese?

A Yes.

Q Where did you see him?

A No, he came to my door.

Q At your home?

A Yes.

Q And did he ring the bell?

A Yes.

Q And did you have a conversation with them, a brief conversation?

A Yes.

Q Will you please tell us as best you recall what he said and what you said?

A He was asking for my --

2 MRS. ROSNER: Objection, your Honor, on
3 behalf of my client. I would ask for a limiting in-
4 struction.

5 THE COURT: Yes.

6 Ladies and gentlemen, you recall what I told
7 you before about evidence to be offered and to be con-
8 sidered only against the person named, nobody else.
9 Do you understand?

10 All right, go ahead.

11 MR. CURRAN: May I ask the question again,
12 your Honor?

13 THE COURT: Yes.

14 BY MR. CURRAN:

15 Q When he came to your house on Saturday, February
16 9th, about what time was that, Mrs. LaSalata?

17 A Well, it was 11:30, 12 o'clock in the afternoon.

18 Q Was he by himself?

19 A Yes.

20 Q Will you please tell us what he said and what
21 you said as best you recall it?

22 A Yes. He asked for my husband and I told
23 him my husband is at his father's because his father's dying
24 and he says, "Well, tell Joey to call me up -- tell Joey
25 to call me up or get in touch with my lawyer or -- my

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F. LaSalata-direct

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2 lawyer." That's what he says.

3 Q Did he say anything else, do you remember?

4 A No. Just about a transcript, something like
5 that, that's all he said.

6 Q Do you remember anything else?

7 A He says -- he says something like, "Tell your
8 husband they not looking for me." That's all he said.

9 Q After this did you talk with your husband?
10 Just yes or no.

11 A Yes.

12 Q Directing your attention now, Mrs. LaSalata,
13 to the next day or evening, February 10th, Sunday, did
14 you see the defendant Butch Pugliese again?

15 A Yes. He came to my door.

16 Q At about what time did he come?

17 A About -- it was in the evening, about 8
18 o'clock, 7:30.

19 Q And what did he do?

20 A Nothing. He just rang my bell.

21 Q Did you answer?

22 A No.

23 Q Did he leave?

24 A Yes.

25 Q Did he come back?

2 A Yes.

3 Q How many times?

4 A About four. About four times.

5 Q When was the last time he was at your door,
6 approximately, what time of the evening?

7 A It was about 2 o'clock in the morning.

8 Q Monday morning now, Sunday night, Monday morning?

9 A Yeah.

10 Q Did the telephone ring that evening?

11 A Yes. My phone rang constantly.

12 Q Did it ever ring when he was at your door?

13 A No.

14 Q Did you answer the phone?

15 A No. I don't do those things -- I don't
16 answer.

17 Q Now, directing your attention, Mrs. LaSalata,
18 to about 7:15, 7:30 Monday morning, did you see Butch
19 Pugliese again?

20 A Yes. I was just about to come to this place
21 and he rang my door and I didn't want to open the door
22 and I --

23 Q Did you talk to him then?

24 A No.

25 Q Directing your attention, Mrs. LaSalata, to

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N. LaSalata-direct

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2 this week, Tuesday evening, February 19th, just last
3 Tuesday, do you remember that day? Did you see Butch
4 Pugliese?

5 A When I was throwing out my garbage I seen him
6 outside my house, yes.

7 Q Did he come to the door this time?

8 A Yes, but he never came in my house.

9 Q Did you talk to him this time, this last time?

10 A No, no, never talked to him, just the first time
11 when he asked me about my father-in-law.

12 MR. CURRAN: Would your Honor bear with me
13 one moment?

14 THE COURT: Yes.

15 (Pause.)

16 MR. CURRAN: No further questions, your
17 Honor.

18 THE COURT: All right.

19 CROSS EXAMINATION

20 BY MR. ROSENBERG:

21 Q Mrs. LaSalata, my name is Theodore Rosenberg.
22 I am the attorney that represents Butch Pugliese.

23 Do you recall the first time the agents came
24 to your home when they took your husband out of the house?

25 A Yes.

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Q You recall that?

A Yes.

Q How many agents came to your home at that time?

A Two.

Q Do you remember them advising you --

MR. ROSENBERG: Withdrawn.

Q Do you remember them advising your husband tht
that he has a right to a lawyer, if you recall?

A No, he never said nothing to us about that.

Q They never said nothing to you?

Did they specifically tell you, Mrs. LaSalata,
not to call anybody when they took your husband out?

A Yes.

Q On the first occasion?

A Yes. They told me, because me and my husband
were stupefied -- right? -- he was sitting down, they
says, "We want to talk to you," and they went downstairs,
and as he was going away they searched my husband and
as he was going away he told me, "Don't call nobody."

Q That was the first time?

A Yes.

Q Now, they came back again, is that correct?

A Yes.

Q And the second time did they tell you again,

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2 "Don't call anybody"?

3 A No, they never did that no more.

4 Q Just the first time, is that right?

5 A Yes. He didn't tell my husband, he told me.

6 Q That is what I am getting at. The second time
7 when they came --

8 A No, he never said nothing.

9 Q So it was just one time that he said that to
10 you?

11 A No, he never said nothing.

12 Q I am talking about the agents that came to your
13 home.

14 A No, they never said nothing, they never spoke
15 to me.

16 Q All right.

17 When Butchie came to your home in February
18 did he tell you -- and let me see if I can recall this to
19 you -- did he tell you, "Ella, we are being framed. Have
20 your husband get in touch with my lawyer"? Did he tell
21 you something like that?

22 A No. He just says, "Have your husband get
23 in touch with my lawyer." He didn't use the word
24 "framed."

25 Q All right.

1
2 Did anybody from the government, anybody at
3 all, tell you, "Don't speak to Pugliese"?

4 A No.

5 Q No? Nobody at all?

6 A No.

7 Q Did your husband --

8 A I never spoke to anybody.

9 Q Did your husband tell you that, "I was told
10 that you shouldn't speak to Butchie"?

11 A My husband, to tell you the truth, as I am
12 sitting here, never told me nothing. He told me he was
13 arrested on tools they took in the yard that he works,
14 because he does not -- he knows I'm very nervous and he
15 wouldn't frighten me. That's all I know, about tools.

16 Q When they came to you to tell you to come down
17 here, when was that when they told you to come down here?

18 A I had to bring my deed to my house and I
19 came on a Monday, I think it was -- no, no, no, no -- yes,
20 yes, yes.

21 Q That was for your husband, you mean?

22 A What?

23 Q When you brought your deed to your house,
24 was that for your husband for the first time?

25 A Yes.

Q Somebody told you to come down this morning and testify, is that right?

A No. I was summonsed.

Q You were summonsed? When were you summonsed?

A Oh, I was summonsed to come here -- I got a summons -- I got a summons Monday, Monday.

What's today?

No, wait a minute. I didn't get a summons Monday. I must have got it, my summons, Wednesday.

Q Do you remember the time of the day it was?

A The time of the what?

Q The day. Was it at night, during the day?

A It was during the day I got summoned.

Q And two agents come to your house and gave you a subpoena, is that what they did?

Did two agents come to your house and give you a subpoena on that day?

A No.

Q One agent came?

A No.

Q How did you get the subpoena? Who brought you the subpoena?

THE WITNESS: I don't know what he's talking about.

THE COURT: Call it a summons.

A I don't know what you're talking about.

THE COURT: The thing that you call a summons, Mrs. La Salata. Lawyers have big words for it. One of the big words that they use all the time is subpoena.

You got a piece of paper from somebody?

THE WITNESS: Yes, I got a paper to come here.

THE COURT: And that happened on Wednesday, right?

THE WITNESS: Yes. I was summoned here.

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E. La Salata-cross

MR. ROSENBERG: Thank you, Judge.

BY MR. ROSENBERG:

Q When they brought you that piece of paper did two agents bring it to you or one agent bring it to you?

A No, I got it here.

Q You say on Wednesday, is that correct, it was Wednesday that you got this piece of paper?

A If you show me the paper I could tell you when it was.

It must have been Wednesday, because I was summoned here the day after. If today is Friday, it's got to be Wednesday.

Q How did you get this piece of paper to begin with? Was it on Wednesday that you got a piece of paper, somebody gave you a piece of paper?

A No. I got a summons.

Q That is what I am talking about, the summons.

THE COURT: That summons, you got it on Wednesday, right?

THE WITNESS: Yes.

Q You got that on Wednesday?

A Yes.

Q Did you come down and speak to Mr. Curran on Wednesday?

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E.La Salata-cross

1
2 A Yes.

3 Q You spoke to him on Wednesday?

4 A Yes.

5 Q And then he told you to come back again on Friday
6 is that what he did?

7 A Yes. No, I came here yesterday, too.

8 Q So you came here Wednesday, you came Thursday
9 and you came today, is that correct?

10 A Yes.

11 Q All right. I am not going to ask you any more
12 questions.

13 THE COURT: Anybody else wish to inquire?

14 Yes, Mr. Curran.

15 REDIRECT EXAMINATION

16 BY MR. CURRAN:

17 Q Mrs. La Salata, I gave you the paper you call a
18 summons, didn't I?

19 A Yes.

20 Q On Wednesday?

21 A Yes.

22 Q Right in my office?

23 A Yes.

24 Q Or right outside my office?

25 A Yes, in the building here.

1 Q And you came to see me with Mr. Atlas, your
2
3 lawyer?

4 A Yes.

5 MR. CURRAN: I have no further questions.

6 THE COURT: All right, Mrs. La Salata. You may
7 step down.

8 (Witness excused.)

9 THE COURT: It seems almost like magic. It's
10 lunchtime already.

11 All right, ladies and gentlemen. Go with the
12 marshal, please.

13 (Jury left the courtroom.)

14 THE COURT: I will see you all at 2 o'clock.

15 (Luncheon recess.)

16 - - -

AFTERNOON SESSION(2:00 p.m.)

(In the robing room.)

MR. DOWD: Judge, we are going to work

out a stipulation in connection with the chemist's

testimony. Okay?

THE COURT: Yes.

MR. DOWD: I think it would be the stand-

ing stipulation: if the chemist were to testify --

do you want to name both of them?

MR. PHILLIPS: I think I can do this fairly

quickly.

The government's proof will establish or we

intend to establish that the defendant Frank Russo first

gave a sample of a white powder to Al Casella, who

was acting in an undercover capacity, I believe on January

6, 1973, and that if the chemist were to testify who

examined that white powder he would testify that it

contained two grains and that heroin was present and that

the per centage of heroin was 12.4 per cent.

Then the government intends to further prove

on January 10, 1973 Russo sold to Al Casella what purported

to be approximately a half a kilo of heroin, which white

powder was turned over to the chemist and was examined by

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2 the chemist and found to contain 16-3/4 ounces plus
3 85 grains with heroin present, the percentage of that
4 heroin being 2.5 per cent.

5 The government further intends to establish
6 that on January 22, 1973, the defendant Frank Russo
7 gave to Al Casella another quantity of narcotics or
8 heroin, which was turned over to the chemist by Casella
9 and was found to contain one ounce plus 10 grains, that
10 heroin was present there, and the percentage of that heroin
11 being 10.6 per cent.

12 May I correct the record in one respect?

13 The proof will show that with regard to the
14 first sale the sale took place on January 5th rather
15 than January 6th.

16 THE COURT: Mr. Dowd, are you willing to
17 stipulate that your client sold to this --

18 MR. DOWD: No.. That is what I am trying
19 to bring out.

20 THE COURT: That is what I am wondering
21 about.

22 MR. PHILLIPS: I said the government in-
23 tends to establish that, and as I understand the stipu-
24 lation Mr. Dowd is prepared to enter into is that the
25 powder that Casella is going to testify he turned over

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2 to the chemist was examined by the chemist and found
3 to contain in quantitative and qualitative amounts what
4 I just stated.

5 We are not saying --

6 MR. DOWD: If the chemist were to testify
7 when each bag were offered I would stipulate if the
8 chemist testified that his testimony would be he received
9 the bag or bags, whichever it may be, that it contained
10 a compound or powder and in that powder he found heroin
11 and he found 12.4 per cent heroin present in that bag.
12 That is what I am stipulating to in each case as it is
13 offered.

14 MR. PHILLIPS: Right.

15 MR. DOWD: Also that if your Honor will not
16 take judicial notice, there is a stipulation that one
17 ounce equals 438 grains.

18 Is that right, doctor?

19 This is Dr. Dugar.

20 DR. DUGAR: Yes.

21 THE COURT: I can't take judicial notice be-
22 cause I don't know, but I can look it up.

23 MR. DOWD: Off the record.

24 (Discussion off the record.)

25 MR. DOWD: Judge, for the record, if Mr.

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2 Phillips will listen to this, about those tapes, I under-
3 stand now that it is a different tape which purports to
4 bear the conversations recorded via NAGRA transmitter on
5 January 1961 than the one I was given yesterday. I will
6 have to listen to that tape and see if that in fact is the
7 case.

8 My initial reaction on playing all the
9 tapes is I never heard such a conversation, but I want
10 to double- and triple-check it before I make an allega-
11 tions that I didn't get the tape.

12 THE COURT: All right.

13 MR.. DOWD: In addition to which, Mrs. Rosner
14 raised a question this morning about her not having a tape.
15 I want to point out to the court that about three or
16 four days ago Mr. Phillips informed Mrs. Rosner in my
17 presence about one of the tapes that was given to me
18 two weeks ago that the name of Louis Inglese was used on
19 the tape. At that time I asked Mrs. Rosner, "Do
20 you want the tape to transcribe? I will get it for
21 you today." And she said, "No, I don't want it."

22 It is not that I was holding the tape back from
23 Mrs. Rosner, I offered it to her, and you were sitting at
24 the table. Okay? That is for the record.

25 THE COURT: All right.

(In open court; jury present.)

THE COURT: Call your next witness.

MR. ENGEL: The government calls Walter Starr

M I L T O N S T A R R, called as a witness

by the government, being first duly sworn, testified

as follows:

DIRECT EXAMINATION

BY MR. ENGEL:

Q Mr. Starr, how are you employed?

A I'm an agent for Goodstein Management

Q What sort of business is Goodstein Management?

A Real Estate.

Q Does it manage buildings?

A Yes..

Q And were you so employed in the years 1971 and 1972?

A Yes..

Q During 1971 and 1972 did your management responsibilities include being an agent for a building located at 1380 University Avenue in the Bronx?

A Yes..

Q Mr. Starr, I show you what has been marked as Government's Exhibit 83 for identification and ask you to

1 gta

Starr-direct

3366

2 take a look at it and tell me whether you can identify
3 it.

4 A This is a lease for apartment 11G at 1380 Univer-
5 sity Avenue.

6 Q How can you identify that?

7 THE COURT: Mr. Starr, do me a favor, please,
8 lean over toward the mike a little bit so everybody can
9 hear you.

10 A It has a signature of Mr. Martin Goodstein on
11 it.

12 Q How many times have you seen the signature
13 of Mr. Goodstein?

14 A Hundreds of times.

15 Q Mr. Starr, I show you Government's Exhibit 84
16 for identification and ask you whether you can identify
17 that.

18 A This is a lease for apartment 7D at 1380 Univer-
19 sity Avenue.

20 Q And how can you identify that document?

21 A By Mr. Martin Goodstein's signature.

22 Q With respect to Government's Exhibit 84, Mr.
23 Starr, did there ever come a time when you had a conver-
24 sation with the superintendent of 1380 University Avenue
25 with respect to the occupant of apartment 7D?

1 gta Starr-direct 3367
2 A Yes. It was either in '71 or the beginning
3 of '72. He told me that --
4 MR. PRAZER: I am going to object. This
5 is hearsay.
6 Q Just answer yes or no then. Did you have
7 such a conversation?
8 A Yes.
9 THE COURT: Yes, he had a conversation.
10 A Yes.
11 Q As a result of that conversation did you talk
12 to Mr. Goodstein?
13 A Yes.
14 Q What did you say to Mr. Goodstein?
15 A I told Mr. Goodstein --
16 MR. ELLIS: Objection as to what he said.
17 THE COURT: Yes, yes. Sustained.
18 Q Mr. Starr, did there ever come a time in 1971
19 or early 1972 when the name Greene was associated with
20 apartment 7D?
21 A Yes.
22 Q And how did that come to your attention?
23 A The super so informed me.
24 Q Mr. Starr, could you tell us, please, on
25 which side of the apartment building apartment 7D is

1 gta

Starr-direct

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2 located?

3 A On the west side, front of the building.

4 Q On what street does that face?

5 A University Avenue.

6 Q Could you tell us where apartment 11G is
7 located.

8
9 A 11G is on the northwest corner of the building.

10 MR. ENGEL: May I have a moment, your
11 Honor?

12 THE COURT: Yes.

13 (Pause.)

14 MR. ENGEL: I have no further questions,
15 your Honor.

16 At this time the government offers Exhibits 83
17 and 84 for identification.

18 MR. FISHER: Objection on the grounds of
19 relevancy.

20 THE COURT: First take a look at them.

21 MR. PANZER: I have no objection with re-
22 spect to Government's Exhibit 83, your Honor.

23 THE COURT: All right.

24 By the way, I forgot one problem. This
25 morning the exhibits marked 3580, 3581, 3582, all

marked for identification, were sealed.

(Pause.)

MR. FISHER: Your Honor, now that I have read it, may I object?

THE COURT: Yes, sure.

MR. FISHER: On the additional grounds, if your Honor please, whether or not Mr. Goodstein signed this is a matter totally irrelevant vis-a-vis these proceedings. No foundation whatever, either as a business record or with regard to the signature, another signature appearing thereon, has been laid in any manner, way, shape or form, your Honor. I respectfully submit it is inadmissible at this time for any purposes against any defendant.

THE COURT: I don't know, because you gentlemen have a very real advantage over me: I haven't seen it yet..

MR.. FISHER: I hope somewhere, your Honor, I also indicated that I regarded this as hearsay.

THE COURT: Yes.

MR. ELLIS: It is also a lease against Goodstein Management and one George Norris, who, to the best of my recollection, has nothing in the world to do with this case.

1 THE COURT: I have no idea.

2 Let me see it.

3 There was also an Exhibit 84. Does anybody
4 object to that?

5 MR. ELLIS: It didn't come to this side of
6 the table.

7 (Pause.)

8 THE COURT: Mr. Sunden, are you objecting?

9 MR. SUNDEN: Yes. With regard to pro-
10 posed Government's Exhibit No.83 I object on the grounds
11 that there is a signature on the bottom. I don't
12 believe there has been testimony that this witness saw the
13 execution of that signature and, in fact, it is hearsay.

14 THE COURT: There are two signatures on the
15 bottom, one he identified the other one he did not.

16 MR. SUNDEN: Right. Apparently they are
17 inseparable.

18 THE COURT: I don't know.

19 MR. ENGEL: Your Honor, the government
20 withdraws its offer with respect to Exhibit 84 at this
21 time.

22 THE COURT: All right.

23 (Pause.)

24 THE COURT: Have we decided on this? Are
25 you still offering Exhibit 83?

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Starr-direct

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MR. ENGEL: Yes, your Honor.

THE COURT: You are still objecting. I
assume?

MR. ELLIS: Yes.

MR. FISHER: Yes.

MR. SUNDEN: Yes, your Honor.

THE COURT: All right. Sustained. Go
ahead.

MR. ENGEL: Your Honor, I have a few more
questions in light of your ruling.

THE COURT: All right.

BY MR. ENGEL:

Q Showing you Government's Exhibit 83 for
identification again, Mr. Staff, by examining that docu-
ment, Mr. Staff, was that document kept in the regular
course of your business in your office?

A Yes.

Q And is it the regular course of your office's
business to keep the document you hold in your hand?

A Yes.

Q Are the entries which appear on the document
made at or about the same time of the transactions that
they reflect, i.e., the rental?

A About the same time, yes.

MR. ENGEL: The government now offers Government's Exhibit 83 as a business record of Goodstein.

THE COURT: Mr. Siegal?

MR. SIEGAL: I object to it.

THE COURT: Mr. Sunden?

MR. SUNDEN: Before your Honor rules, I wonder if I might ask one or two questions.

THE COURT: You want a voir dire on it?

MR. SUNDEN: Yes.

THE COURT: Yes.

(Pause.)

MR. SUNDEN: I changed my mind, your Honor

THE COURT: We all do that from time to time.

MR. SUNDEN: I renew my objections.

THE COURT: I will sustain it.

Does anyone wish to cross examine Mr. Starr?

All right, Mr. Panzer.

1 hpl Starr-cross

T2

2 CROSS EXAMINATION

3 BY MR. PANZER:

4 Q Mr. Starr --

5 MR. ENGEL: Your Honor, could we have a side
6 bar on this?

7 MR. PANZER: You want a side bar?

8 THE COURT: Go ahead.

9 Q Mr. Starr, you are the rental agent for that
10 building?

11 A No, the managing agent. We manage the building.

12 Q How many tenants do you have in that building?

13 A 130.

14 Q Do you collect the rent for that building?

15 A We did, yes.

16 Q No. Do you personally go up there and collect the
17 rent for that --

18 A No, I do not.

19 Q Do you know all the tenants in that building?

20 A No, I do not.

21 Q Do you know of your own personal knowledge
22 whether a fellow by the name of Harry Pannirello ever
23 went into that building?

24 A No, I do not.

25 Q Do you know of your own personal knowledge

1 hp2.

Starr-cross

2 whether a fellow by the name of Pasquale Provitera, also
3 known as Jimmy, ever went into that building?

4 A No, I do not.

5 MR. PANZER: I have no further questions.

6 THE COURT: Anybody wish to examine?

7 All right. Let's have the side bar now.

8 (At the side bar.)

9 MR. PHILLIPS: Your Honor, I have a copy of the
10 Federal Business Records Act of 1936 and it seems to me that
11 the questions asked by Mr. Engel qualify this document as
12 a business record inasmuch as the witness has said that it's
13 the regular course of his business to keep such a record,
14 the record is kept in the regular course of his business,
15 and that the transactions that are reflected by the entries
16 thereon occurred at or about the time of the making of the
17 entries.

18 THE COURT: I have no doubt that this lease was
19 executed at or about the date reflected on the document.
20 I have no doubt that it reflects the business of Goodstein
21 Management. My problem is there is a signature on the lease
22 and I believe it's being offered to show that Hattie Ware
23 was the occupant of the Apartment 11-G and the inference
24 to be drawn is not only that a Hattie Ware was the lessee
25 but also that this Hattie Ware was the lessee of the apart-

1 hp3

Starr-cross

2 ment.

3 MR. ENGEL: Your Honor, I think that is an
4 inference that may be permissible for the jury to make,
5 but that just goes to the weight of the evidence, it
6 doesn't go to the admissibility of it.

7 MR. PHILLIPS: Particularly in view of Mr.
8 Pannirello's testimony and Mr. Provitera's testimony.

9 MR. ENGEL: Further, your Honor, I would say we
10 are not offering it necessarily to show that she was the
11 occupant, but that she was the lessee, and the jury is
12 entitled from the evidence to draw whatever conclusion they
13 want to from the other evidence.

14 MR. PHILLIPS: Your Honor, we have offered
15 direct evidence through Harry Pannirello and Provitera that
16 she was the occupant and we are offering this as corrobora-
17 tion.

18 MR. PANZER: Notwithstanding your Honor's comment,
19 I have no objection to it. I guess I am in a better position
20 to say whether it is or is not her signature on the lease.

21 THE COURT: All right.

22 MR. PANZER: So I have no objection.

23 THE COURT: It will be received.

24 (In open court.)

25 THE COURT: Government's Exhibit 83 marked for

1 hp4 Starr-cross

2 identification will be received in evidence.

3 (Government's Exhibit 83 received in
4 evidence.)

5 THE COURT: Anybody else wish to inquire of
6 this witness:

7 All right, Mr. Starr. Thank you very much.
8 Step down.

9 (Witness excused.)

10 MR. ENGEL: Your Honor, may I describe the docu-
11 ment to the jury at this time?

12 THE COURT: Sure.

13 MR. ENGEL: This is a model form of lease --

14 MR. SUNDEN: Judge, I object to that. I think
15 it speaks for itself.

16 THE COURT: All right.

17 MR. ENGEL: I was going to save time. I will
18 pass it if you like.

19 THE COURT: Pass it.

20 (Pause.)

21 THE COURT: You want to call your next witness?

22 MR. PHILLIPS: Yes, your Honor. The government
23 calls Art Carter.

24 MR. PANZER: Your Honor, I just want to make a
25 statement. With respect to this document, I have no

1 hp5

2 objection.

3 THE COURT: All right.

4 A R T H U R C A R T E R, JR., called as a witness
5 on behalf of the government, being first duly
6 sworn, testified as follows:

7 MR. PANZER: Your Honor, before we start could
8 we have a side bar?

9 THE COURT: Yes.

10 (At the side bar.)

11 THE COURT: What is the problem?

12 MR. PANZER: Your Honor hasn't ruled on the other
13 lease at 150 West 225th Street or any of the documents that
14 were seized there.

15 THE COURT: Right.

16 MR. PANZER: I believe I made a motion to re-
17 open.

18 THE COURT: Yes.

19 MR. PANZER: This witness is going to testify
20 about that.

21 THE COURT: I will tell you exactly I will rule.
22 First of all, the suppression of the lease, the
23 pictures and the narcotics is denied.

24 The lease I believe would be relevant in this
25 trial. The pictures I believe would be relevant in this

1 hp6 Carter-direct

2 trial. But I don't believe nor will I permit into evidence
3 the narcotics seized at 150 West 225th Street.

4 MR. PANZER: That is all I wanted to know.

5 THE COURT: All right.

6 (In open court.)

7 DIRECT EXAMINATION

8 BY MR. FORTUIN:

9 Q Mr. Carter, by whom are you employed?

10 A I am employed by the United States Department of
11 Justice, the Drug Enforcement Administration.

12 Q And what is your position?

13 A I am a special agent.

14 Q How long have you been a special agent?

15 A Almost six years.

16 Q Directing your attention to the early morning
17 hours of October 4, 1973, were you on duty?

18 A Yes, sir, I was.

19 Q Where were you?

20 A I was at our regional office at 57th Street.
21 That is 555 West 57th Street.

22 Q At that time did you receive a telephone number
23 from John Nolan?

24 A Yes, sir, I did.

25 Q And who is John Nolan?

1 hp7

Carter-direct

2 A He is a special agent with the Bureau.

3 Q Did you call that phone number?

4 A Yes, sir, I did.

5 Q Did somebody answer?

6 A Yes, sir.

7 Q Was it a male or a female?

8 A A female.

9 Q Will you tell us the conversation you had at
10 that time?

11 MRS. ROSNER: Objection, your Honor.

12 MR. FISHER: Objection, your Honor. It could be
13 a conversation with any of roughly six billion people.

14 THE COURT: What is the date of this conver-
15 sation?

16 MR. FORTUIN: It would be October 4th.

17 THE COURT: I will permit it. Go ahead.

18 MRS. ROSNER: Your Honor, may we have an offer
19 of proof at the side bar?

20 THE COURT: I think I know what it is.

21 MRS. ROSNER: I don't, Judge, and it's im-
22 possible to make objections without knowing what is coming.

23 THE COURT: This is one time I am going to
24 hold back.

25 Go ahead.

1 hp8 Carter-direct

2 BY MR. FORTUEN:

3 Q Agent, would you tell us the conversation?

4 A Yes, sir. I called the telephone number given
5 to me by Agent Nolan and a female voice answered the
6 telephone and I asked if Basil was there and she told me
7 no, he wasn't, and I said, "My name is Art, I am a friend
8 of his, I would like to talk to him," and she said, "Well,
9 he's not here right now," and I said, "What time do you
10 expect him back?", and she indicated about two or three
11 hours, and I told her that it was not too late, "I will
12 call back in a couple of hours. maybe two or three hours.

13 I said, "By the way, who is this, Bunny," and she
14 said, "Yes."

15 I said, "Okay, tell him Art called."

16 That ended the conversation.

17 Q And did you call back in a few hours?

18 A Yes, sir, I did, about three hours later.

19 Q About what time would this be then?

20 A About three o'clock in the morning of October 4,
21 1973.

22 Q And what happened this time?

23 A When I called back the second time the same
24 female voice answered the telephone and I said, "This is
25 Art calling again."

2 MR. FISHER: Objection, if your Honor please, to
3 this conversation as well.

4 THE COURT: All right.

5 MR. FISHER: It is hearsay.

6 THE COURT: All right.

7 A I said, "This is Art calling again," and I said,
8 "Is Basil there yet?"

9 She said, "Just a moment, hold the phone."

10 Q Officer, while you were having this conversation
11 was anyone else present in the room with you?

12 A Yes, sir. That was Richard G. Smith.

13 Q Who is he?

14 A He is the group supervisor for the group that I
15 am in here in New York.

16 Q Then after she said she would get someone else
17 did someone else come to the phone?

18 A Yes, sir.

19 Q Did you have a conversation with him or her?

20 A Yes, sir. A male voice came to the phone and I
21 started the conversation by saying, "This is Art," and I
22 tried to make him remember me. I told him I had met him
23 at a club through some friends of mine, I knew him, and he
24 told me that he couldn't remember me. He said, "I don't
25 know who you are."

1 hp10 Carter-direct

2 The conversation mainly was that I was trying
3 to keep him --

4 MR. FISHER: Objection, if your Honor please.

5 THE COURT: No, not what you were trying to do.
6 You had this conversation.

7 THE WITNESS: I had the conversation.

8 THE COURT: Eventually the conversation ended,
9 is that right?

10 Q While you were having this conversation did
11 you say or do anything with respect to the other person
12 that was present in the room with you?

13 A I gave a signal to Mr. Smith.

14 Q Did you see him do anything?

15 A He was on the telephone talking to our base
16 radio station.

17 Q After the beginning of the conversation that
18 you just described what happened after that?

19 A I asked him if -- well, he told me -- when I
20 first started talking I asked him if it was Basil and he said
21 yes.

22 I told him I wanted to see him on some business
23 and he kept saying, "Well, I don't know who you are.
24 Maybe we met somewhere, but I can't remember."

25 While I was talking to him, I heard a sound,

1 hpl1

Carter-direct

2 like somebody was knocking a door in or knocking the wall
3 down, and he at that time told me, he said, "Something is
4 going wrong here. I can't talk to you any longer,"
5 and he slammed the phone down.

6 Q What was the tone of his voice or the pitch of
7 his voice when he said that?

8 A It appeared to me he was excited.

9 Q Was it hurried?

10 A Very hurried.

11 MR. FORTUIN: No further questions.

12 THE COURT: Anyone want to inquire?

13 MR. FISHER: Yes, just briefly. May I inquire
14 from here?

15 THE COURT: Sure. Just keep your voice up.

16 CROSS EXAMINATION

17 BY MR. FISHER:

18 Q Agent Carter, you said you are a special agent,
19 is that right?

20 A Yes, sir, I am.

21 Q Isn't it a fact that every agent of the Drug
22 Enforcement Administration is a special agent?

23 A Every agent in enforcement is a special agent.
24 We do have compliance agents, sir, within the agency.

25 Q So there is nothing really special about a special

1 hpl2 Carter-cross

2 agent, is that right?

3 MR. FORTUIN: Objection. It's representative.

4 THE COURT: Do you have any other questions?

5 Anybody else wish to inquire?

6 All right, Agent. Step down.

7 THE WITNESS: Thank you, sir.

8 (Witness excused.)

9 MR. PHILLIPS: The government calls John Nolan.

10 THE COURT: He is going to be a relatively long
11 witness, right, Mr. Phillips?

12 MR. PHILLIPS: Maybe ten minutes on direct, your
13 Honor, fifteen minutes.

14 THE COURT: All right.

15 J O H N J O S E P H N O L A N, called as a witness
16 on behalf of the government, being first duly
17 sworn, testified as follows:

18 THE COURT: Mr. Phillips, before you proceed
19 just come up for a moment.

20 (At the bench; discussion off the record.)

21 THE COURT: I just changed my mind. We are
22 going to take our afternoon break now.

23 (Jury left the courtroom.)

24 THE COURT: You can step down, Agent.

25 (Witness left the courtroom.)

1 hp13

2 THE COURT: The reason I requested Mr. Phillips
3 to come up here was because I had an inkling, large or
4 small, that he might through this particular witness,
5 try to prove the prior photographic identification of two
6 defendants presently on trial, one of them being Henry Salley,
7 the identification being by Pannirello --is that correct?

8 MR. PHILLIPS: Yes, your Honor.

9 THE COURT: -- and the other identification being
10 that of Joseph Di Napoli.

11 MR. PHILLIPS: By the same witness.

12 THE COURT: By Pannirello.

13 This matter has been argued at extended length
14 by both sides. After reviewing all the cases, and
15 particularly reviewing what the District of Columbia Circuit
16 holds and the Second Circuit holds, I believe that Mr.
17 Phillips and the government are entitled to show the prior
18 photographic identification, but totally as a matter of
19 discretion I am not going to permit the prior photographic
20 identification of Henry Salley by Mr. Pannirello.

21 There was another --

22 MR. PHILLIPS: But you are as to Di Napoli, your
23 Honor?

24 THE COURT: As to Di Napoli, yes. I said it is
25 a matter of discretion as to Salley that I am denying it.

1 hpl4

2 There was something which occurred at side bar
3 which nobody else heard. There was a motion made by Mr.
4 Panzer as to the suppression of certain things taken from
5 an apartment located at 150 West 225th Street, the Bronx.

6 MR. PANZER: Manhattan, your Honor. I thought
7 it was Manhattan.

8 MR. ENGEL: Yes, it is Manhattan. It's that little
9 part of the Bronx that is Manhattan.

10 THE COURT: It is a little part of the Bronx that
11 is Manhattan? All right.

12 MR. POLLAK: Marble Hill.

13 THE COURT: It's Marble Hill, I gather.

14 However, I might as well tell everybody about it.
15 There were three particular items seized. I already
16 filed an opinion. To begin with, I was asked to reconsider
17 on the basis of new facts. I did reconsider and I finally
18 ruled.

19 Three groups of items were seized. One was
20 pictures. The pictures have already been marked and
21 received in evidence.

22 The second group of documents -- I believe them
23 all to be documents -- consists of a lease for the apartment,
24 I believe two checks made out to the rental agent, and I
25 think there was a bill also. I am not sure about that.

1 hp15

2 Is that going to be offered?

3 MR. PHILLIPS: Yes, your Honor, a telephone bill

4 THE COURT: The third thing or group of things
5 which the government would like to offer--by the way, I am
6 permitting in the lease and the telephone bill and the
7 checks -- the third thing which the government would like
8 to offer are narcotics, part of which was in sealed bags
9 and part of which I gather was not in sealed bags. The
10 narcotics I am not permitting to come into evidence.

11 All right. Since the jury can take a ten-
12 minute break we can take a ten-minute break.

13 MR. ELLIS: Your Honor, I wanted to say some-
14 thing about the testimony of Mrs. La Salata this morning.
15 We didn't have an opportunity immediately after the lunch
16 break because the jury preceded your Honor to the court-
17 room.

18 Would this be a good opportunity or should we
19 wait until four o'clock?

20 THE COURT: Let's wait.

21 MR. DOWD: Judge, would you ask somebody from
22 your office to bring down the order that we referred to.

23 THE COURT: Oh, yes. The one that you didn't
24 see.

25 MR. DOWD: Yes.

hp15a

THE COURT: All right. Take ten.

(Recess.)

(In the robing room.)

THE COURT: A stipulation has been discussed in a robing-room conference between Mr. Panzer and representatives of the government, Mr. Curran, Mr. Phillips and Mr. Engel.

There are various items being offered which were seized at Hattie Ware's apartment, particularly a lease and certain checks. Mr. Panzer has indicated he is not going to object to the receipt in evidence of the lease.

Is that correct.

MR. PANZER: Except that it was seized at 150 West 225th Street where Basil and Estelle Hansen were alleged to have been living.

THE COURT: All right. However, while he does not object, he wants to make clear on the record that he is not relinquishing his position that the items seized at that apartment, which are being offered and which I am permitting, or will permit in if a proper foundation is laid -- he still believes that they should have been suppressed and he does not waive anything in connection with the suppression hearing. He wants to make certain -- I believe this is correct -- that any points that he has on appeal as to any error I made in connection with the suppression hearing are not waived.

MR.. PANZER: That is correct.

And the additional stipulation with respect to the cancelled money orders --

THE COURT: Are they money orders?

MR.. PANZER: Aren't they money orders?

MR.. PHILLIPS: Yes.

MR.. PANZER: Which will be that they too were found in the apartment at 150 West 225th Street.

MR.. PHILLIPS: The agent is going to testify to this. I think our stipulation goes to the author of the money order, that is all.

MR.. PANZER: I was going to get to that.

And the government will stipulate that it is not Hattie Ware's signature on the money orders, although her name does appear.

THE COURT: All right. Is that it?

MR.. PHILLIPS: Yes.

MR.. PANZER: Just with respect to the telephone items, is your Honor going to let them in? I don't have to stand up and object. I can do it now.

THE COURT: Do you have an objection to them?

MR.. PANZER: I do.

THE COURT: All right.

(In open court; jury present.)